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BILL ANALYSIS

Senate Fiscal Agency

• Lansing, Michigan 48909

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Senate Bill 257 (as enrolled)(vetoed)
Sponsor: Senator Doug Cruce
Senate Committee: Commerce and Technology
House Committee: Corporations and Finance

Date Completed: 7-24-90

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SUMMARY OF SENATE BILL 257 as enrolled:

The bill would amend the Regulatory Loan Act to increase the regulatory loan ceiling; provide for biannual, rather than annual examinations of licensed lenders; provide for examination, loan processing, and check handling fees; and change the Act's provisions concerning disclosure statements, credit life insurance, and interest rates. The bill would take effect October 1, 1990.

Examinations

Currently, the Commissioner of the Financial Institutions Bureau is required to examine the affairs, business, office, and records of each licensee to the extent that they pertain to any business licensed under the Act. The bill would delete this provision and require instead that--at least once during every two-year period--the Commissioner examine a licensee's books, accounts, records, and files. These provisions could not be construed to prohibit the keeping of records by electronic data processing methods. Further, the bill would allow books and accounts to be kept at a location other than the licensee's principal place of business, provided they were made available to the Commissioner upon request and the licensee paid the actual and reasonable travel expenses if the examiner had to travel out-of-State.

Under the bill, the annual license fee would no longer cover examinations. Instead, the examination fee would be based on a rate of not less than \$20 nor more than \$40 per hour for each examiner engaged in the examination. Each examination fee would be invoiced upon completion of the examination and would be due and payable upon receipt of the invoice by the licensee. The licensee would not be required to pay for more than one examination fee in a calendar year.

In addition, the bill specifies that the Commissioner could maintain a cause of action in the Court of Claims to recover any fees a licensee failed to pay. The fees would be paid into the State Treasury and credited to the Financial Institutions Bureau. (Currently, any fees collected under the Act are credited to the General Fund.)

Interest

The Act currently allows a licensee to charge a monthly interest fee of up to one-twelfth of either:

- 18% per year of the unpaid principal balance up to the regulatory loan ceiling.

-- A combination of 31% per year on the unpaid principal balance up to \$500 and 13% per year on the unpaid principal balance over \$500 up to the regulatory loan ceiling.

The bill would delete these provisions and provide for an interest rate of up to 22% per year on the unpaid balance. The rate for a loan made for the purchase of a motor vehicle could not exceed the rate provided for that class of vehicle in the Motor Vehicle Sales Finance Act. The bill would delete requirements that loan charges be paid only as a percentage per month of the unpaid principal balance and that a licensee who advertises aggregate, combination or graduated rates first state the higher rate applicable to a portion of the loan and give the highest rate equal prominence with the lower rate applicable to the remainder of the loan.

Fees

The bill would allow lenders to charge a loan processing fee of up to 2% of the principal or a maximum of \$40 for each loan made and include the fee in the loan principal. A licensee could not induce or permit a person to become obligated directly or contingently, under more than one loan contract at the same time for the purpose or with the result of obtaining a loan processing fee not otherwise permitted by the bill. Further, a licensee would be prohibited from receiving a loan processing fee for a loan contract that was renegotiated, renewed, or modified or that was issued to obligate a person to repay a sum of money that was previously lent to the person through a prior loan contract by the licensee.

Finally, the bill would allow a licensee to charge a handling fee of \$5 and the amount of the actual charge made to the licensee by a depository institution for the return of an unpaid and dishonored check, draft, negotiable order or similar instrument given to the licensee in full or partial repayment of a loan.

Void Loan Contract

The Act currently specifies that if, in the making or collection of an otherwise valid loan contract, an action that constitutes a misdemeanor under the Act is taken, the contract is void and the lender cannot collect or receive any principal, interest or charges, unless the action is a bona fide clerical error. The bill provides, instead, that a person who entered into an otherwise valid loan contract would be barred from recovering interest or principal if a misdemeanor were committed in the making or collection of the contract unless the misdemeanor were the result of an accidental, bona fide or judicially determined justifiable error. A court could provide for recovery of the principal if the court found that the violation occurred as a result of good faith reliance on documented advice of government regulators or the Attorney General.

Criteria for Granting a License or Permission to Relocate

The bill would remove the provision that before granting a license or allowing a licensee to relocate, the Commissioner must find that allowing an applicant to engage in the lending business or relocate would "promote the convenience and advantage of the community". Further, the bill would delete the prohibition against allowing a business to move outside of its original county under the same license.

Other Provisions

The bill would:

- Increase the regulatory loan ceiling from \$3,000 to \$8,000; the application fee for a regulatory loan license from \$150 to \$300; and the annual license fee from \$250 to \$300.
- Allow licensees to provide credit life insurance for co-borrowers. (The Act currently restricts licensees to offering credit life to only one borrower even if there are co-borrowers.)
- Require licensees to deliver to the borrower disclosure statements in compliance with Federal Regulation Z. Currently, the Act specifies that the licensee must provide the borrower with a statement of the amount and date of the loan and its maturity, the nature of any security for the loan, rate of charge, and name and address of the borrower.
- Change from February 15 to March 15 the filing deadline for the reports licensees must submit to the Commissioner every three years. Further, the bill specifies that such reports would be exempt from disclosure under the Freedom of Information Act unless the Commissioner found that such disclosure would be in the public interest.
- Specifically allow licensees to make loans by mail.
- Delete language prohibiting a licensee from inducing or permitting a borrower to split up or divide a loan.

Repeal

The bill would repeal sections of the Act that require licensees to file their promotional plans with the Commissioner; provide for the "grandfathering in" of persons licensed under Public Act 317 of 1921, a former regulatory loan act that was repealed and superseded by Public Act 21 of 1939; and repeal earlier regulatory acts.

MCL 493.1 et al.

Legislative Analyst: L. Burghardt

FISCAL IMPACT

The bill would have a minimal fiscal impact on State government and no fiscal impact on local government.

Currently, the Financial Institutions Bureau (FIB) licenses approximately 60 regulatory loan establishments. The \$50 increase in the annual license fee would generate an additional \$3,000 annually (60 businesses x \$50) for the State. In addition, assuming that the bill would cause a 50% increase in the number of regulatory loan establishments, the additional revenue that would be generated would be \$9,000 annual revenue (30 businesses x \$300 annual license fee) and \$9,000 one-time revenue (30 business x \$300 application processing fee).

The provision that would change the required examination of each regulatory loan establishment from an annual basis to a biannual basis would not reduce the FIB staff expense. The provision that the FIB could charge these establishments for the examination, rather than absorb the cost, would save the State \$6,750 annually assuming the FIB conducted 45 exams per year with an average charge of \$150.

Fiscal Analyst: J. Schultz

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.